U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
NOV 30 2009
AT ____ O'CLOCK ____
Lawrence K. Baerman, Clerk - Syracuse

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

****

UNITED STATES OF AMERICA

v.

DONALD GEISS, JR.,

Defendant.

Criminal Action No.
5:09-CR-592 (NAM)

PLEA AGREEMENT

****

ANDREW T. BAXTER, United States Attorney for the Northern District of New York (by Edward R. Broton, appearing) and DONALD GEISS, JR. (with Robert Walczyk, Esq., appearing) hereby enter into the following Plea Agreement regarding the disposition of certain criminal charges against the Defendant:

1. **Defendant's Promises.** In return for the consideration described below, DONALD GEISS, JR. agrees as follows:

a. The Defendant will waive indictment and enter a plea of guilty to a two-count Information charging him with conspiring to launder the proceeds of a mail and wire fraud offense, in violation of 18 U.S.C. § 1956(h) and tax evasion, in violation of 26 U.S.C. § 7201.

b. The Defendant consents to the entry of an order directing him to pay restitution of $1,630,407 to Intertek, which he stipulates qualifies as a victim under 18 U.S.C. § 3663 or § 3663A of the underlying mail and wire frauds, and of the money laundering offense.

2. **Potential Penalties.** DONALD GEISS, JR. understands that his guilty plea will subject him to the following potential penalties:

a. Maximum Term of Imprisonment: 20 years (18 U.S.C. § 1956) and 5 years (26 U.S.C. § 7201)

b. Supervised Release: In addition to imposing any other penalty, the sentencing Court may require the Defendant to serve a term of supervised release of up to 3 years, to begin at the expiration of any term of imprisonment imposed upon him. (18 U.S.C. § 3583) Should the Defendant be placed on a term of supervised release and subsequently violate any of the terms and conditions of that release before the expiration of such term, he may be sentenced to up to 2 years imprisonment in addition to any prison term previously imposed upon him and in addition to the statutory maximum term of imprisonment set forth above. Under some circumstances, the Court may also extend the term of supervised release, and it may modify, reduce, or enlarge the conditions of such release.

c. Maximum Fine: $500,000 (18 U.S.C. § 1956(a)(1)) and $100,000 (26 U.S.C. § 7201) In its discretion, the Court may impose a fine of the greater of $250,000 or twice the pecuniary gain to the Defendant or loss to any victim resulting from the offense of conviction. (18 U.S.C. § 3571(b) & (d))

d. Mandatory Restitution: Pursuant to the Mandatory Victim Restitution Act, the sentencing Court must order that the Defendant pay restitution to any victim of the offense of conviction, as more fully set forth in paragraph 1 above. (18 U.S.C. § 3663A)

e. Special Assessment: The Defendant will be required to pay an assessment of $200, which is due and payable at the time of sentencing. (18 U.S.C. § 3013) The Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of $200, payable to the U.S. District Court at the time of his sentencing.

f. Interest and Penalties: Interest and penalties may accrue, as a matter of law, on any unpaid financial obligation imposed as part of the Defendant's sentence, from as early as the date of sentencing.

g. Collateral Consequences: Conviction of a felony under this Agreement may result in the loss of certain civil rights, including, but not limited to, the right to vote and the right to possess firearms.

3. **Sentencing Factors.** DONALD GEISS, JR. understands that the sentence to be imposed upon him is within the discretion of the sentencing Court, subject to the statutory maximum penalties and the provisions of the Sentencing Reform Act and the United States Sentencing Guidelines promulgated thereunder, as modified by *United States v. Booker*, 543 U.S. 220 (2005). While the Court is not ultimately bound to impose a sentence within the applicable Sentencing Guidelines range, it must take into account the Sentencing Guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a). The United States Attorney's Office will ask the Court to apply the Guidelines in effect on the date of sentencing, pursuant to 18 U.S.C. § 3553(a)(4)(A)(ii) and U.S.S.G. § 1B1.11, even if the application of the Guidelines in effect at the time the defendant committed the offense would generate a lower sentencing range.

4. **Elements of the Offense.** DONALD GEISS, JR. understands the following legal elements of the offense stated in:

a. 18 U.S.C. § 1956(h), and admits that those elements accurately describe his criminal conduct:

i. *First*: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan to violate 18 U.S.C. § 1956, and

ii. *Second*: That the Defendant, knowing the unlawful purpose of the plan, wilfully joined in it;

iii. *Third:* That following their agreement, the Defendant knowingly conducted or caused to be conducted a financial transaction that involved property that was the proceeds of specified unlawful activity (in this case money taken by fraud), and that the Defendant engaged in the financial transaction with the intent to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity.

b. 26 U.S.C. § 7201, and admits that those elements accurately describe his criminal conduct:

i. *First*: That the Defendant owed substantial income tax in addition to that declared in his tax return; and

ii. *Second*: That the Defendant knowingly and willfully attempted to evade or defeat such tax.

5. **Factual Basis for the Plea.** DONALD GEISS, JR. admits the following facts, which establish his guilt with respect to the offense stated in 18 U.S.C. §§ 1956(h):

a. From on or before 2001 until on or about March 2007, DONALD GEISS, JR. was employed as the Director of Health and Safety at Intertek located in Cortland, NY.

b. In or about 2001, DONALD GEISS, JR. devised a scheme to defraud his employer, Intertek, of its money. It was part of the scheme that, beginning in or about 2001, DONALD GEISS, JR. agreed with two other individuals (identified in this Information as "GS" and "MZ") that he would use their names to hide money that he obtained from Intertek.

c. Beginning in or about 2001, DONALD GEISS, JR. submitted vouchers to Intertek for payment on behalf of those individuals, who were identified as a medical doctor and a Certified Industrial Hygienist. In both cases, the vouchers sought payment for work that was never done.

d. When Intertek issued the checks based upon the fraudulent vouchers, the checks would be endorsed on the back, made payable to another individual, who was an attorney, and deposited into the attorney's Interest on Lawyer Account (IOLA) at Solvay Bank, or on rare occasion deposited into an account controlled by GEISS or a co-conspirator.

e. In this way, from 2001 through 2007 the two individuals were paid approximately $1,488,657.00 for services they had supposedly provided to Intertek, but which in fact had never been provided.

f. In 2005, DONALD GEISS, JR. asked two other individuals (identified in this Information as "JE" and "BZ") if they would establish a business that would allow him to hide money he obtained from Intertek.

g. Beginning in 2005 and continuing through 2007, DONALD GEISS, JR. submitted vouchers to Intertek for payment on behalf of the company and one of the individuals, where the individual was identified as a Certified Industrial Hygienist. In each instance, the voucher sought payment for work that was never done.

h. When Intertek issued the checks based upon the fraudulent vouchers, the checks would be endorsed on the back, made payable to the attorney, and deposited into the attorney's IOLA account.

i. In this way, from 2005 through 2007 the company and the individual were paid approximately $141,750.00 for services they had supposedly provided to Intertek, but which in fact had never been provided.

j. According to records kept in the ordinary course of business at Intertek, the following checks were issued at the request of Donald Geiss, Jr. in furtherance of the scheme to defraud described above, and were mailed via the U.S. Postal Service to the recipients identified below:

Payee	Date Mailed	Amount
"GS"	1/6/2005	$19,000
"GS"	8/16/2004	$9,750
"GS"	6/9/2004	$20,000
"GS"	8/14/2002	$7,750
"GS"	5/3/2002	$2,750
"MZ"	8/7/2002	$7,200
"MZ"	9/4/2003	$20,000
"MZ"	7/03/2003	$17,000
"MZ"	10/07/2004	$40,000
"MZ"	8/16/2004	$20,000
"MZ"	7/22/2004	$50,000

k. On or about February 14, 2005, DONALD GEISS, JR., knowingly caused Intertek to transmit by means of wire communications in interstate commerce, writings and signals, specifically a wire transfer of $120,000 payable to "MZ" from its account in Dallas, Texas to the attorney's IOLA account in New York.

l. Of the $1,630,407 that represented the proceeds of the scheme to defraud described above, approximately $1,457,107 was endorsed on the back and deposited into the attorney's Interest on Lawyer Account (IOLA) at Solvay Bank, or was wire transferred into that account.

m. Using the funds from those deposits and at the direction of DONALD GEISS, JR., the attorney wrote checks that were payable:

i. To DONALD GEISS, JR. and to members of his family

ii. To creditors of DONALD GEISS, JR.

iii. To the attorney, from which the attorney obtained official bank checks on which the remittor was a third party and which were payable to DONALD GEISS, JR., members of his family, or his creditors.

iv. To co-conspirators of DONALD GEISS, JR.

n. Pursuant to the agreement described above, on or about the dates set out below, in the Northern District of New York, DONALD GEISS, JR. and the attorney knowingly and willfully undertook financial transactions using what they knew to be the proceeds of the mail and wire fraud described above, knowing that each transaction was designed in whole or in part to disguise the source, ownership or control of the proceeds of the unlawful activity, each transaction being an overt act in furtherance of the conspiracy:

Date	Transaction	Amount	Payee
2/15/2005	Check	$40,200	The attorney, to purchase official bank checks payable to [JG] ($16,000), Donald Geiss ($4,000), CNY Professional Holdings ($4,500), Bernard's Clothiers ($1,800), "AO" ($4,500), "DS" ($5,500), and "BH" ($3,900)
1/30/2006	Check	$11,500	The attorney to purchase an official bank check payable to [JG] ($11,500)
2/13/2006	Check	$20,000	The attorney to purchase an official bank check listing Geiss as remitter and payable to Infinity of Syracuse
6/14/2006	Check	$37,722	The attorney to purchase an official bank check for $34,722 listing "GS" as the remitter and payable to the Internal Revenue Service and to pay Don Geiss $3000 in cash
1/26/2007	Check	$14,500	The attorney to purchase official bank checks payable to [JG] ($3,500) and Oneonta Audi ($10,000) and to pay Don Geiss $1000 in cash
8/22/2007	Check	$7,559.19	The attorney to purchase four checks payable to "JG" ($3500), HSE Consulting,($1320.48) AmeriCU ($868.71 for Geiss' mortgage) and AmeriCU ($1870 for a payment on Geiss' Mercedes Benz)

o. On or about April 15, 2006, in the Northern District of New York, the defendant, DONALD GEISS, JR., a resident of Syracuse NY, did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 2005 , by filing and causing to be filed with the Internal Revenue Service a false and fraudulent U.S. Individual Income Tax Return, Form 1040. In that false return, DONALD GEISS, JR. stated that his taxable income for the calendar year 2005 , was a loss of $17,573, and that the amount of tax due and owing thereon was $0. In fact, as he then and there knew, his taxable income for the calendar year was $404,638, upon which taxable income there was owing to the United States of America an income tax of $119,686.

p. The Defendant understands that the sentencing Court may make factual findings with respect to any and all sentencing factors and issues, including those referenced in the United States Sentencing Guidelines, whether or not such factors or issues have been admitted by the Defendant or stipulated by the parties. In making those findings by a preponderance of the evidence, the Court may consider any reliable evidence, including hearsay. The Defendant agrees that his sentence may be determined based upon such judicial fact-finding.

6. **Use of Defendant's Admissions.** The Defendant agrees that the statements made by him in signing this Agreement, including the factual admissions set forth above in paragraph 5, shall be admissible and useable against the Defendant by the United States in any subsequent criminal or civil proceeding, even if he fails to enter a guilty plea pursuant to this Agreement, or if such a guilty plea is later vacated or withdrawn. The Defendant waives any rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410, to the extent these rules are inconsistent with this paragraph or with this Agreement generally.

7. **Collection of Financial Obligations.** In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the Defendant agrees fully to disclose all assets in which he has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party.

a. The Defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The Defendant promises that his financial statement and disclosures will be complete, accurate and truthful.

b. The Defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on him in order to evaluate the Defendant's ability to satisfy any financial obligation imposed by the Court.

8. **Government's Promises and Reservation of Rights.** In exchange for the plea of guilty to Count One and Count Two of the Information by DONALD GEISS, JR. and his continuing compliance with all of the terms of this Plea Agreement, the United States Attorney's Office for the Northern District of New York agrees as follows:

a. It will bring no further federal criminal charges against the Defendant relating to the embezzlement of money from Intertek from 2001 to 2007 described in the Information for so long as the guilty plea and sentence on Count One and Count Two of the Information remain in effect.

b. If the guilty plea to Count One or Count Two of the Information is later withdrawn or vacated, the charges not prosecuted pursuant to subparagraph 9a of this Agreement may be filed and prosecuted, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the filing of any such charges. The Defendant waives any defense or objection to the filing and prosecution of any such charges that are not time-barred by the applicable statute of limitations as of the date of this Agreement.

c. The U.S. Attorney's Office reserves the right to advise the sentencing Court and the Probation Office of any information, in aggravation or mitigation of sentencing, whether or not encompassed within Count One and Count Two of the Information.

9. **Sentencing Stipulations.** The U.S. Attorney's Office and DONALD GEISS, JR. agree to the statements set forth in subparagraph a below, subject to the caveats set forth in the subparagraphs following.

a. Stipulations

i. The Defendant's sentence on Count One is determined by U.S.S.G. § 2S1.1(a)(1), which incorporates by reference U.S.S.G. § 2B1.1.

(A) Under U.S.S.G. § 2B1.1(a)(1) the base offense level is 7.

(B) The offense level is increased 16 levels because the loss for which the defendant is accountable is more than $1,000,000 but not more than $2,500,000 pursuant to U.S.S.G. § 2B1.1(b)(H).

(C) The defendant was convicted under 18 U.S.C. § 1956 resulting in an offense level increase of 2 levels pursuant to U.S.S.G. § 2S1.1(b)(2)(B).

(D) The defendant abused a position of public or private trust in a manner that significantly facilitated the commission or concealment of the offense resulting in a 2 level increase in the offense level pursuant to U.S.S.G. § 3B1.3.

(E) While the defendant reserves the right to challenge the applicability of U.S.S.G. § 2B1.1(b)(9), he recognizes the Government will advocate that the offense level should be increased 2 levels because the offense involved sophisticated means.

ii. (A) The Defendant's sentence on Count Two is determined by 2T1.1 and 2T4.1, which establishes a base level offense of 20 (with a tax loss in excess of $400,000).

(B) The defendant failed to report or correctly identify the source of income exceeding $10,000 in any year from criminal activity resulting in a 2 level increase pursuant to U.S.S.G. § 2T1.1(b)(1).

(C) While the defendant reserves the right to challenge the applicability of U.S.S.G. § 2T1.1(b)(2), he recognizes that the Government will advocate that the offense involved sophisticated means resulting in a 2 level increase.

iii. While the defendant reserves the right to challenge the applicability of U.S.S.G. § eB1.1(a), he recognizes that the Government will advocate that the offense level is increased 4 points due to § 3B1.1 (a), due to the Defendant's role as a leader and organizer of criminal activity that involved five or more participants.

iv. The U.S. Attorney's Office will recommend a 2-level downward adjustment to the applicable Sentencing Guidelines range if, (A) through the time of sentencing, the Defendant clearly demonstrates "acceptance of responsibility" to the satisfaction of the Government for the offense of conviction, as defined in U.S.S.G. § 3E1.1(a); and (B) the Government does not learn of new evidence of conduct committed by the Defendant, either before or after his guilty plea, that constitutes "obstruction of justice," as defined in U.S.S.G. § 3C1.1. If the Guideline Offense level equals 16 or above, and if the Defendant clearly demonstrates "acceptance of responsibility" to the satisfaction of the Government and promptly enters a plea of guilty, thereby permitting the U.S. Attorney's Office to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently, the U.S. Attorney's Office will move for an additional downward adjustment of 1 level, if the Defendant otherwise qualifies under U.S.S.G. § 3E1.1(b).

(A) Until the Probation Office has fully investigated the defendant's criminal history, it is not possible to predict with certainty the Defendant's Criminal History Category and, in some cases, his total offense level.

(B) It is understood that these stipulations cannot and do not bind the sentencing Court, which may make independent factual findings by a preponderance of the evidence and may reject any or all stipulations between the parties. The rejection of any or all stipulations by the Court will not be the basis for the withdrawal of a plea of guilty by the Defendant, and will not release either the U.S. Attorney's Office or the Defendant from any other portion of this Agreement, including any other stipulations agreed to herein.

(C) No stipulation in this Agreement shall affect the parties' respective obligations to ensure that, to the extent possible, the Court has all information pertinent to its determination of an appropriate sentence. The parties may provide any such factual information to the Probation Office and/or to the Court, without limitation, before or after the completion of the Presentence Investigation Report, and agree that the submission of such information shall not be deemed "advocacy" in violation of any stipulation in this Agreement.

(D) To the extent the stipulations above do not reflect agreement on any factor or issue potentially affecting the applicable advisory Sentencing Guidelines range, the Defendant and the U.S. Attorney's Office each expressly reserves the right to advocate if, and how, any such factor or issue would apply under the Sentencing Guidelines.

10. **Preliminary Sentencing Guidelines Estimates.** The Defendant understands that any estimate of the Defendant's total offense level, criminal history score, and/or Sentencing Guidelines

range provided before sentencing is preliminary and is not binding on the parties to this Agreement, the Probation Office, or the Court.

11. **Limitations on Agreement.** This Agreement is limited to the U.S. Attorney's Office for the Northern District of New York and cannot bind other federal, state or local prosecuting authorities. Furthermore, this Agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the Defendant, including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax liability.

12. **Agreement Not Binding on the Court.** The Court is neither a party to, nor bound by this Agreement. The Court may accept or reject this Plea Agreement or defer a decision until it has considered the Presentence Investigation Report prepared by the U.S. Probation Office.

a. If the Court rejects the provisions of this Agreement permitting the Defendant to plead guilty to Count One and Count Two of the Information in satisfaction of other charges, which provisions were negotiated pursuant to Fed. R. Crim. P. 11(c)(1)(A), the Court will afford the Defendant an opportunity to withdraw his plea of guilty prior to sentencing, pursuant to Fed. R. Crim. P. 11(c)(5) & (d).

b. The Court is not bound by any recommendation or request made by the parties, pursuant to Fed. R. Crim. P. 11(c)(1)(B), as to the appropriate sentence, and the Defendant may not withdraw his plea of guilty if the Court declines to follow any such recommendation or request. The U.S. Attorney's Office reserves the right to support and defend, in connection with any post-sentencing proceedings, any decision the Court may make with regard to the Defendant's sentence, whether or not such decision is consistent with this Office's recommendations or requests.

13. **Waiver of Defendant's Rights.** The Defendant acknowledges that he has read each of the provisions of the entire Plea Agreement with the assistance of counsel and understands its provisions. The Defendant further acknowledges that his plea is voluntary and did not result from any force, threat, or promises (other than the promises in this Plea Agreement).

a. The Defendant understands his right to assistance of counsel at every stage of the proceeding and has discussed his constitutional and other rights with defense counsel. The Defendant understands that by entering a plea of guilty, he will be giving up his rights (i) to be presumed innocent until proven guilty beyond a reasonable doubt; (ii) to plead not guilty; (iii) to trial by jury; (iv) to confront, cross-examine, and compel the attendance of witnesses at trial; (v) to present evidence in his defense; and (vi) to remain silent and refuse to be a witness against himself by asserting the privilege against self-incrimination.

b. The Defendant has been advised by defense counsel of the nature of the charges to which he is entering a guilty plea and the nature and range of the possible sentence. The Defendant understands the sentencing Court's obligation to consider the United States Sentencing Guidelines (as explained further above) and the Court's discretion to depart from those Guidelines under some circumstances or otherwise to impose a reasonable sentence outside of the applicable Sentencing Guidelines range.

14. **Memorialization of Agreement.** No promises, agreements or conditions other than those set forth in this Agreement will be effective unless memorialized in writing and signed by all parties or confirmed on the record before the Court. This Agreement, to become effective, must be signed by all of the parties listed below.

ANDREW T. BAXTER
United States Attorney
Northern District of New York

Dated: September 29, 2009

By: Edward R. Broton
Edward R. Broton
Assistant U.S. Attorney
Bar Roll No. 101230

Dated: SEPTEMBER 25, 2009

DONALD GEISS, JR.
Defendant

Dated: September 25, 2009

Robert Walczyk, Esq.
Attorney for Defendant
Bar Roll No. 508223